

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1736 OF 2019

Bhaskar Narayanrao Kale and Ors.

Vs.

Yeshwant Mahadeo Vairagade and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.K. Bhoyar, Advocate for petitioners.
Mr. S.V. Sohoni, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 18.04.2022.

The petitioners are aggrieved by order dated 24.10.2018 passed by the Court of District Judge-1, Hinghanghat, District Wardha, whereby applications filed by the petitioners as well as the respondents and others stood disposed of by appointment of respondent Nos.1 to 6 and one other person as Trustees of the Laxminarayan Deosthan, Kapsi. The principal contention raised on behalf of the petitioners is that when material is available on record to indicate that respondent Nos.1 to 6 have committed irregularities, while working as Trustees and a *suo moto* enquiry is pending before the Joint Charity Commissioner, Nagpur, they ought not to

have been even considered for appointment as Trustees of the said Trust.

2. In the present case, a scheme for the said Trust was framed by the District Court, Wardha, as far back as in the year 1969. As is frequently found in affairs of Trusts, there are dissensions within the Trustees, leading to allegations being made against one another as regards the manner in which the affairs of the Trust are being managed.

3. It is the case of the petitioners that respondent Nos.1 to 6, while performing their functions as Trustees of the aforesaid Trust, have indulged in illegalities, including financial irregularities due to which the Inspector had prepared a report dated 12.05.2014 and submitted the same before the Assistant Charity Commissioner. On the basis of the said report, by an order dated 20.05.2014, the Assistant Charity Commissioner took note of the contents of the report submitted by the Inspector and directed that the material be placed before the Joint Charity Commissioner for taking necessary action under Section 41-D of the Maharashtra Public Trust Act, 1950.

4. By referring to the contents of the report of the Inspector and the order passed by the Assistant Charity Commissioner, as also on the basis of the pendency of the *suo moto* proceeding before the Joint Charity Commissioner bearing Application No.111/2017, it was contended on behalf of the petitioners that the impugned order deserved to be interfered with.

5. Mr. Bhoyar, learned counsel appearing for the petitioners referred to the contents of the report of the Inspector as also the order passed by the Assistant Charity Commissioner and he emphasized upon the pendency of the proceedings before the Joint Charity Commissioner, to contend that in the impugned order the District Judge, ought not to have passed the order appointing respondent Nos.1 to 6 as Trustees, while rejecting the application of the petitioners.

6. It is submitted that due to the pendency of the dispute between the parties, the said respondents have already enjoyed their term as Trustees, well beyond the five years period specified in the scheme and in the face of such material on record, they ought not to have been even considered for being appointed as Trustees.

7. On the other hand, Mr. Sohoni, learned counsel appearing for contesting respondent Nos.1 to 6 submitted that other than allegations made in general as observed in the impugned order, there was no finding by the competent authority against them as regards the said allegations. It is submitted that merely because allegations were made against the said respondents due to rivalry within the Trustees of the said Trust, the said respondents cannot be held to be disqualified to hold the position of Trustees.

8. It was submitted that nothing was brought on record to demonstrate that after the impugned order was passed on 24.10.2018, there was any material indicating any irregularity or wrong doing on the part of the said respondents.

9. This Court has considered the material on record. There is no dispute about the fact that on the basis of allegations levelled against the respondent Nos.1 to 6, a report was prepared by the Inspector on 12.05.2014, in which certain observations have been made against the said respondents. On the basis of such material, the Assistant Charity Commissioner passed the order dated 20.05.2014, directing that the material be placed before the Joint Charity Commissioner to initiate appropriate action. In

pursuance thereof, *suo moto* enquiry proceedings bearing Application No.111/2017, are indeed pending before the Joint Charity Commissioner.

10. The question is, whether pendency of the said proceedings on the basis of allegations levelled against respondent Nos.1 to 6, can be considered to be sufficient material to disqualify the said respondents from being considered for appointment as Trustees. There can be no two opinions about the fact that on the question of managing affairs of such Trusts, there are always disputes and dissensions within the Trustees, leading to allegations and counter allegations.

11. In such a situation, it would not be safe to proceed against a set of individuals only on the basis that certain allegations have been levelled against them. At this stage, this Court is averse to look at the contents of the report of the Inspector to reach findings or conclusions against respondent Nos.1 to 6, as that would amount to pre-empting the *suo moto* enquiry already pending before the Joint Charity Commissioner.

12. The District Judge in the impugned order is justified in holding that since there are no findings

as on today as against respondent Nos.1 to 6 pertaining to allegations levelled against them, it would not be appropriate to not consider their candidature for appointment as Trustees.

13. It is also a fact that the impugned order was passed on 24.10.2018, demonstrating that a major portion of the five year term of the said Trustees is already over. There is nothing brought on record to show that during this period, there was material placed on record to indicate that there was any wrong doing or illegalities committed by the said respondents appointed as Trustees. Therefore, no case is made out for interference in the impugned order.

14. Nonetheless, it would be in the interest of justice that the enquiry proceeding pending before the Joint Charity Commissioner on the basis of the order passed by the Assistant Charity Commissioner is concluded at the earliest.

15. In view of the above, writ petition is dismissed.

16. The Joint Charity Commissioner i.e. respondent No. 7 is directed to expedite proceeding in Application No.111/2017 i.e. *suo moto* enquiry

pending before the said authority. The proceedings in the said application shall be taken up forthwith. The parties shall co-operate with the Joint Charity Commissioner in early disposal of the proceedings.

17. It is directed that the Joint Charity Commissioner shall dispose of Application No.111/2017, in any case, within a period of **six months** from today.

JUDGE

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